1st Technology LLC v. IQ-Ludorum, PLC, et al Doc. 15

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

1ST TECHNOLOGY LLC, Plaintiff, v. IQ-LUDORUM PLC, PLAYTECH CYPRUS LTD., TILTWARE LLC, and KOLYMA CORPORATION, A.V.V., Defendants.	Case No.: 2:06-cv-323-LDG-RJJ

PLAINTIFF 1ST TECHNOLOGY LLC's OPPOSITION TO DEFENDANT TILTWARE, LLC's MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, FOR TRANSFER OF VENUE

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Plaintiff 1st Technology LLC, by and through its counsel of record HUTCHINSON & STEFFEN, LLC, hereby files this Opposition to Tiltware, LLC's Motion to Dismiss / Motion to Transfer Venue. This Opposition is based on the attached Memorandum of Points and Authorities, the Exhibits attached hereto, and the papers and pleadings on file herein in this case.

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

This Court should deny Defendant Tiltware, LLC's ("Tiltware") Motion to Dismiss for Improper Venue or, in the alternative, for Transfer of Venue, because this judicial district is a proper venue for Plaintiff 1st Technology, LLC's ("1st Technology") patent infringement suit against Tiltware. Should Tiltware's motion be granted, 1st Technology opposes transfer or dismissal of Defendant IQ-Ludorum, PLC ("IQ-Ludorum") and Defendant Playtech Cyprus, Ltd. ("Playtech"), and requests that this Court transfer only the Tiltware defendants (Tiltware and Kolyma Corporation, A.V.V.).

I. VENUE IN NEVADA IS PROPER FOR TILTWARE

This Court is a proper venue for this lawsuit. This Court can exert personal jurisdiction on Tiltware. Tiltware's software is available to Nevada residents through co-defendant Kolyma Corporation, A.V.V.'s ("Kolyma") website http://www.fulltiltpoker.com/. (Exhibit A). Tiltware and the Full Tilt Poker website are closely affiliated. Tiltware's website claims that Tiltware "currently provides exclusive software development and marketing consulting services for . . . Full Tilt Poker." (Exhibit B, About Us, http://www.tiltware.com/ aboutus.php) (accessed June 16, 2006). The Full Tilt Poker website, in turn, states that "Full Tilt Poker™ software was developed by TiltWare LLC, a software development and licensing company." (Exhibit C, About Full Tilt Poker, http://www.fulltiltpoker.com/ pressReleases.php?release=45) (accessed June 16, 2006). Additionally, the "Careers" link on the Full Tilt Poker Website hyperlinks directly to Tiltware's homepage. (Exhibit A, http://www.fulltiltpoker.com) (accessed June 16, 2006).

Tiltware's software is provided to Nevada residents through Full Tilt Poker's website, and Tiltware uses Nevada events as incentives to promote these services. Accordingly, Tiltware has availed itself of the benefits of the State of Nevada to such an extent that venue, based on personal jurisdiction, is proper. Tiltware is not entitled to dismissal under Rule 12(b)(3) for improper venue. While 1st Technology has not yet had the opportunity to take discovery on the issue of Tiltware's contacts with Nevada, even on the limited record available, this jurisdictional district is a proper venue for the litigation. Should the Court feel otherwise, 1st Technology respectfully requests the opportunity to take discovery solely as to venue and jurisdiction to establish the complete extent of Tiltware's presence in Nevada.

A. Venue

Pursuant to 28 U.S.C. 1391, this jurisdictional district is the proper venue for this matter. "Once a defendant has raised a timely objection to venue, the plaintiff has the burden of showing that venue is proper." *Bohara v. Backus Hosp. Med. Ben. Plan*, 390 F. Supp. 2d 957, 960 (D. Cal. 2005). Here, plaintiff can do so. "Venue in a patent action against a corporate defendant exists wherever there is personal jurisdiction." *Trintec Indus., Inc. v. Pedre Promotional Prod., Inc.*, 395 F.3d 1275, 1280 (Fed. Cir. 2005) (citing *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1583 (Fed. Cir. 1990).

B. Personal Jurisdiction

In order to establish that personal jurisdiction over Tiltware is proper, 1st Technology must show "that (1) Nevada's long-arm statute confers personal jurisdiction over [Tiltware]; and (2) that the exercise of jurisdiction comports with the constitutional principles of due process." *Rio Prop., Inc. v. Rio Intl. Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (affirming lower court's finding of personal jurisdiction over nonresident Internet gambling business).

Nevada's long-arm statute permits jurisdiction "on any basis not inconsistent with the constitution of this state or the Constitution of the United States." Nev. Rev. Stat. Ann. § 14.065 (LEXIS 2006) To meet the requirements of due process under the Constitution, 1st Technology mush show only that Tiltware has the minimum contacts with Nevada "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

This Court can and should exert personal jurisdiction, or alternatively, general jurisdiction, over Tiltware. To establish specific *in personam* jurisdiction, the plaintiff must allege facts which, if true, would show that the following three-part test is met: "(1) [Tiltware] must have performed some act or consummated some transaction with the forum by which it purposefully availed itself of the privilege of conducting business in Nevada; (2) [Tiltware]'s claims must arise out of or result from [Tiltware]'s forum-related activities; and (3) the exercise of jurisdiction must be reasonable." *Rio Prop., Inc.*, 284 F.3d at 1019 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

Failing a finding of specific *in personam* jurisdiction, the court may still be able to exercise general jurisdiction by alleging facts which, if true, would show that defendant has "such continuous and systematic contacts with the forum that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice." *Reebok Int'l Ltd. V. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995) (citing *Core-Vent v. Nobel Indus. AB*, 11 F.3d 1482, 1485 (9th Cir. 1993)).

1. Specific Jurisdiction

Each of the three prongs of the Ninth Circuit test for specific jurisdiction are fulfilled in the present case.

First, "[t]he purposeful availment requirement ensures that a nonresident defendant will not be haled into court based upon random, fortuitous, or attenuated contacts with the forum state." *Rio Prop., Inc.*, 284 F.3d at 1019; See *Burger King*, 471 U.S. at 475. The Ninth Circuit found no specific jurisdiction over a Florida website advertiser because "something more" was required beyond the "essentially passive home page," which was not interactive, and was not used to conduct business. *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418-19 (9th Cir. 1997). The Full Tilt Poker website, however, is a highly interactive site, and has at least one Nevada customer, and likely many more. Users connect to Full Tilt Poker using the Tiltware software, which is downloaded at http://www.fulltiltpoker.com/download.php. (Exhibit D). Each user represents a separate act of infringement induced and participated in by Tiltware. Username "Sloshedzeus's" profile lists "N. Las Vegas" as the user's location, and the user claimed to "work for a casino in Las Vegas" on the website's discussion forum. (Exhibit E, http://pokerforums.fulltiltpoker.com/ viewtopic.php?p=82061& highlight=#82061) (accessed June 15, 2006). Nevada online players were introduced to Full Tilt Poker when "Team Full Tilt joined executives from Tiltware in a press conference . . . at the Plaza Hotel and Casino in Downtown Las Vegas to [] announce the launch of FullTiltPoker." (Exhibit F, Press Releases, *Tiltware, LLC And World Famous Poker Players Launch Full Tilt Poker - The Next Generation of Online Poker Software*, http://www.fulltiltpoker. com/pressReleases.php?release=1) (accessed June 15, 2006). Nevada online players are continuously solicited to use Full Tilt Poker and Tiltware's software through poker magazines such as "Card Player," which is "owned and published [in Las Vegas], and is distributed for free in many Las Vegas poker rooms." (Exhibit G, Jeff Simpson, *Jeff Simpson wonders why there's no crackdown on state's Internet poker players*, LAS VEGAS SUN (Feb. 12, 2006)). Tiltware has availed itself of

Nevada jurisdiction because Nevada residents use the software to access Full Tilt Poker and because the solicitation of Nevada residents at Tiltware/Full Till Poker's May 2004 product launch in Las Vegas and Full Tilt Poker's magazine ads constitute "something more." Because Tiltware's contacts with Nevada (which includes attendance at Las Vegas press conferences to promote the infringing products) can hardly be described as "random," Tiltware meets the first factor supporting personal jurisdiction.

Second, the claim must be one that arises out of or relates to the defendant's forum-related activities. *Rio Prop., Inc.*, 284 F.3d at 1019; See *Burger King*, 471 U.S. at 475. The claim of patent infringement arises directly from the gaming software provided by Tiltware to Full Tilt Poker clients. In particular, the patent infringement arises from the downloading and use of Tiltware's Full Tilt Poker software by Las Vegas-based users (and thousands more nationwide), the extent of which could be determined through targeted discovery. Apparently, "Internet sites such as . . . Full Tilt Poker have taken over as the student relaxation activity of the 21st century on college campuses," and Internet poker is the "game of choice" among UNLV students. (Exhibit H, Howard Stutz, *Easy money, easier addiction?*, LAS VEGAS TRIBUNE (Oct. 14, 2005)). "To determine whether a claim arises out of forum-related activities, courts apply a 'but for' test." *Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001). Were Tiltware not providing the Full Tilt Poker software, there would be no infringement suit. The "but for" test is met, since it is clear that the claim arises from the conduct.

Third, the exercise of jurisdiction must be reasonable, or comport with "fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 316. There is a presumption that jurisdiction is reasonable so long as the first two prongs of the specific jurisdiction test have been met. See

Shwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004) (stating that the plaintiff bears the burden of satisfying the first two prongs of the specific jurisdiction test and that, "[i]f the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to 'present a compelling case' that the exercise of jurisdiction would not be reasonable"). Although the defense has failed to mount an argument as to the reasonableness of the State of Nevada exercising jurisdiction over Tiltware, we will outline the relevant issues in this analysis.

Courts consider seven factors to whether the exercise of jurisdiction is reasonable:

> (1) the extent of a defendant's purposeful interjection; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Rio Prop., Inc., 284 F.3d at 1019; See *Core-Vent*, 11 F.3d at 1488.

1. *Purposeful Injection*: as discussed above, Tiltware and Full Tilt Poker provide software to Las Vegas clients, advertise to potential clients in Las Vegas and announced the launch of the Full Tilt Poker website in Las Vegas, all of which demonstrate purposeful injection into Nevada. Further, FullTilt and Tiltware have hosted poker tournaments in Las Vegas, used for promotion of the Tiltware brands and products. (Exhibit K, *Full Tilt Poker to Run $500,000 Las Vegas Tournament* (identifying Tiltware as the sponsor and developer of the event, and quoting Raymond Bitar, CEO of Tiltware) and Exhibit L, *Poker Professional Kristy Gazes Wins $250,000 at the FullTiltPoker.Net Championship at Wynn Las Vegas* (identifying Tiltware as the developer of Full Tilt Poker software), see also Exhibit M, *FullTiltPoker.net and Fox Sports Net announce a live poker broadcast to showcase the world's top poker players*

in a $500,000 tournament, announcing the event on Full Tilt's web site). Further, Tiltware has transacted business in this district as described below, in the section on general jurisdiction.

2. *Burden on Defense*: The defense has failed to delineate any burden placed on Tiltware by being sued in Nevada. Even should such a burden be assumed, "unless such inconvenience is so great as to constitute a deprivation of due process, it will not overcome clear justification for the existence of jurisdiction." *Roth v. Garcia Marquez*, 942 F.2d 617, 623 (9th Cir. 1991). The abundance of flights from Los Angeles to Las Vegas, the reasonable drive (< 300 miles), and Tiltware's product launch in Las Vegas suggest that Tiltware is certainly capable of defending itself in this forum to such an extent that it will not be deprived due process. Significantly, in modern litigation, almost all activities save the trial itself take place at the locations selected by the parties, rather than in the locality of the Court.

3. *Conflict with Foreign State's Sovereignty*: As this case arises from enforcement of a U.S. patent, it only reaches as far as infringing acts taking place in the United States. In regards to Tiltware, there are no concerns regarding the sovereignty of any foreign country.

4. *Forum State Interest*: Nevada has a strong public policy interest in regulating and managing the pursuit of gaming activity within Nevada, including Internet-based activity, and including any infringement which takes place within Nevada. Further, as the Tiltware companies promote their products and services including by, for example, promoting and providing entries into the World Series of Poker (taking place in Nevada), the overlap between online and brick-and-mortar gaming is significant, particularly in Nevada.

5. *The Most Efficient Judicial Resolution of the Controversy*: This prong deals with "the efficiency of the forum, particularly where the witnesses and evidence are likely to be located." *Caruth v. Int'l Psychoanalytical Ass'n*, 59 F.3d 126, 129 (9th Cir. 1995) (citations omitted). 1st

Technology opposes transfer of co-defendants IQ-Ludorum and Playtech because 1st Technology has already initiated Hague service on these foreign co-defendants. IQ-Ludorum was recently served, and will be responding to the complaint soon. The most efficient judicial resolution will occur if the action against Tiltware is heard concurrent to these similar matters. Additionally, with Nevada's "expertise resolving disputes involving gambling entities, [it] can most efficiently resolve the dispute." *Rio Prop., Inc.*, 284 F.3d at 1021. While 1st Technology has also initiated Hague service on Kolyma, 1st Technology agrees that Kolyma should be tried with Tiltware, as the companies are related.

6. *Importance of Forum to Plaintiff*: The plaintiff has counsel in Nevada who is familiar with this matter and has chosen Nevada as the forum in which to proceed. Again, this factor is at least neutral, and tends to favor Nevada due to the similar matters involving Kolyma, IQ-Ludorum and Playtech.

7. *Unavailability of Alternate Forum*: If plaintiff cannot bring suit against Kolyma, IQ-Ludorum and Playtech in Nevada, it is questionable that plaintiff will be able to proceed in another U.S. forum. As foreign corporations, defendants Kolyma, IQ-Ludorum and Playtech can be sued equally in any state with which they transact business. Since Nevada is a prime market for online gambling, it stands to reason that if the transactions of business in Nevada are not sufficient to grant jurisdiction, it would be difficult for 1st Technology to seek jurisdiction over them in another forum. Contrary to Tiltware's assertion, 1st Technology and Tiltware are **not** located in the same district. Tiltware, located in Central District of California, and 1st Technology, located in the Northern District of California, each have reasonable access to the District of Nevada so that all of these matters may be resolved concurrently. To move the matter to the Central District would be to favor Tltware's preferred forum over 1st

Technology's, at an additional inconvenience. Given the proliferation of flights to this forum, it is easier for 1st Technology and its counsel to attend proceedings and trial here than in Los Angeles.

8. *Balancing the Factors*: Tiltware has not overcome the presumption that jurisdiction is reasonable, and therefore Tiltware is not entitled to dismissal for improper venue pursuant to Rule 12(b)(3).

2. General Jurisdiction

To establish general *in personam* jurisdiction, Tiltware "must have sufficient contacts to 'constitute the kind of continuous and systematic general business contacts that approximate physical presence.'" *Fisher v. Prof'l Compounding Ctrs. of Am., Inc.*, 318 F. Supp. 2d. 1046, 1050 (D. Nev. 2004) (quoting *Glencoe Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114 (9th Cir. 2000)). The degree to which the defendant solicits or engages in business in the state, whether or not the defendant makes sales and if the defendant serves the state's markets are among the factors the court may consider in making this determination, although lists such as these are to be illustrative rather than limiting. *Id.*; See also *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984) (focusing "upon the 'economic reality' of the defendants' activities rather than a mechanical checklist"). Important in recent Ninth Circuit findings of no general jurisdiction over nonresident Internet businesses was that the websites were "'passive', i.e., consumers cannot use it to make purchase." *Bancroft & Masters, Inc. v. Augusta Natl. Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000); *Cybersell, Inc.*, 130 F.3d at 419.

Tiltware, through co-defendant Kolyma's website, meets the first set of factors set out in these cases: it sells, solicits business and serves Nevada's markets. As described above, Full

Tilt Poker and Tiltware's software are not passive, but instead, create a highly interactive website where business is conducted with Nevada clients. Also described above, Full Tilt Poker and Tiltware advertise to potential clients in Las Vegas and jointly announced the launch of the Full Tilt Poker website in Las Vegas. Moreover, Team Full Tilt, a select group of professional poker players sponsored by Full Tilt Poker, continuously promote the website by playing in Las Vegas tournaments such as the Bellagio Five-Start World Poker Classic. (Exhibit I, Press Releases, *Full Tilt Poker's Pros Own the Felt at Bellagio and Foxwoods*, http://www.fulltiltpoker.com/ pressReleases. php?release=42) (accessed June 15, 2006). Lastly, this involvement in the gaming marketplace certainly affects and is affected by the state's markets. (Exhibit J, Liz Benston, *Nevada players ante up online*, LAS VEGAS SUN (Apr. 15, 2005)). Tiltware's contacts are part of a "consistent and substantial pattern of business relations." *Theo Davies & Co. v. Republic of the Marshall Islands*, 174 F.3d 969, 975 (9th Cir. 1998); see also *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

Moreover, the contact Tiltware has with Nevada through the Full Tilt Poker online casino is sufficient to grant general jurisdiction under the Ninth Circuit's "sliding scale" which grants jurisdiction if the party in question clearly does business over the internet and if those contacts are substantial or continuous and systematic. See *Cybersell*, 130 F.3d at 417-19; *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997); *Revell v. Lidow*, 317 F.3d 467, 470-71 (5th Cir. 2002). "At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper." *Zippo Mfg. Co.*, 952 F. Supp. At 1124 (citations omitted). This is exactly that situation. In order to communicate with Full

Tilt Poker, customers in Nevada (and throughout the United States) download Tiltware's software and connect, through the Internet, to Full Tilt's servers to play poker, either for free or to place actual wagers. Applying the sliding-scale test, Tiltware's contacts with Nevada are sufficient to confer general jurisdiction.

Tiltware and Kolyma's entire business model is predicated on a highly interactive website and software package designed solely to transact business over the Internet:

> TiltWare, LLC currently provides exclusive software development and marketing consulting services for one of the world's fastest growing poker sites, Full Tilt Poker. . . . The software features leading-edge technology, superior graphics, a user-friendly interface, and customizable avatars and backgrounds.

(Exhibit B, About Us, http://www.tiltware.com/aboutus.php) (accessed June 15, 2006). Indeed, the virtual casinos so approximate physical presence that they are competing with brick-and-mortar casinos directly for gaming revenue. (Exhibit J, Liz Benston, *Nevada players ante up online*, LAS VEGAS SUN (Apr. 15, 2005)). This is exactly the technology to which the 1st Technology patent is directed.

Tiltware also pursues significant marketing and promotional activity in Las Vegas, and has even hired press in Las Vegas to work with its President and CEO during the annual World Series of Poker. Tiltware widely promotes its involvement in the World Series of Poker tournament, held annually in Las Vegas. Tiltware's CEO Ray Bitar gives media interviews from the plush Full Tilt Lounge, "an exotic themed suite decked out with leopard skin couches, and lamps and tapestries, instead of fluorescent lighting and bare tan walls." (Exhibit Q, *The Business of Poker – Interview with Ray Bitar, CEO of Tiltware*). Those media interviews describe Bitar's company "Tiltware" as the "software and marketing company for Full Tilt Poker." (Id.). Such "marketing" activities take place in the State of Nevada. Bitar admits that the exotic themed suite alone "gives us a presence" at the World Series of Poker – in other words, a presence in Las Vegas, Nevada in this jurisdictional district. (Id.). During frequent visits to Las Vegas, Bitar scrupulously identifies himself to the media as the CEO of Tiltware. (See Exhibits K and M). As the CEO of Tiltware, Bitar promotes its involvement in televised poker events. (Id.).

Tiltware's president is Howard Lederer. (Exhibit P, *The Poker Professor: Interview with Howard Lederer*). In furtherance of the marketing Tiltware performs for Full Tilt in Las Vegas, Mr. Lederer and CEO Bitar have hosted at least one bash at a LasVegas location, complete with ice sculptures and food, as reported by Cigar Aficionado. (Exhibit O, *Pokermania*, from the Cigar Aficionado's Poker Blog). During these frequent "marketing" visits to this jurisdictional district, Bitar and Lederer have carried out Tiltware internal business. They hired at least one employee during a Las Vegas restaurant dinner. (Exhibit N, *Both Sides of the Rail*).

Lastly, this exercise of jurisdiction must be reasonable. The reasonableness test set out by the Ninth Circuit in *Amoco* for general jurisdiction is identical to the test for reasonableness of determining specific jurisdiction, which we addressed above. *Amoco Egypt Oil Co. v. Leonis Nav. Co.*, 1 F.3d 848 (9th Cir. 1993). It bears repeating, however, that the burden is on the defendant to present a compelling case that the assertion of jurisdiction is not reasonable. *Id.* at 851-852. Here, Tiltware simply cannot do so. It has customers in Nevada, transacts business in Nevada, and makes significant use of Nevada as a base of operations. It specifically induces and participates in infringement in Nevada by transmission of and use of its Full Tilt Poker software.

C. Request For Discovery

Given the nature of defendant's operations in the Nevada, specific additional information on the totality of the degree to which Tiltware transacts business in the state of Nevada is understandably difficult to come by. While 1st Technology believes the use by Las Vegas users of Tiltware's infringing product and Tiltware/Full Tilt Poker's direction of promotion and advertising to Nevada are sufficient to show that this Court's exercise of jurisdiction is proper, should the court feel that additional or more specific facts be outlined, such as the number of Tiltware software downloads in Nevada, the court "may permit discovery to aid in determining whether it has personam jurisdiction." *Data Disc, Inc. v. Systems Tech. Assoc.'s, Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir. 1977) (citing *Wells Fargo & Co., Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977). 1st Technology requests, if the Court is inclined to grant Tiltware's motion, that it be permitted to "pursue precisely focused discovery aimed at addressing matters relating to personal jurisdiction." *GTE New Media Serv.'s Inc. v. Bellsouth Corp.*, 199 F.3d 1343, 1352 (D.C. Cir. 2000) (allowing jurisdictional discovery to determine defendants' involvement in websites). Such discovery should not need to be more than a few highly directed document requests and interrogatories, and a limited number of depositions, including specifically the deposition of Tiltware's declarant and a Rule 30(b)(6) deposition.

II. 1st TECHNOLOGY OPPOSES TRANSFER OF VENUE

For the foregoing reasons, transfer is also inappropriate. 1st Technoloy, as identified in its complaint, is located in the Northern District of California – not the Central. Transfer is not the simple transfer to both companies' home district that Tiltware makes it out to be. For the reasons venue is appropriate in this Court, transfer is inappropriate.

Tiltware also suggests that IQ-Ludorum and Playtech be transferred with it to the Central District of California. Yet there is no relationship of any kind between IQ-Ludorum, Playtech and either Tiltware or Kolyma. This is simply inappropriate. 1st Technology has already undertaken the expense of Hague service, including translation and service of papers on both IQ-Ludorum and Playtech. While 1st Technology agrees that Kolyma and Tiltware should be tried together (as Kolyma provides the marketing channels for Tiltware's software), there is no compelling rationale by which Playtech and IQ-Ludorum should be transferred as well. It will only delay the proceedings against them by months, as service through the Hague can take in excess of four to five months, a fact of which this Court is well aware. Indeed, given the relationship Tiltware and Kolyma have to *this* jurisdition, it makes sense to retain the case, in its entirety, in Las Vegas. That said, 1st Technology has also contacted each of Playtech and IQ-Ludorum for purposes of resolving this matter. 1st Technology's track record of resolving cases pending before this Court is good, and 1st Technology hopes to be able to dismiss one or more of the matters shortly.

Finally, 1st Technology agreed to an extension of time for Tiltware to answer. The additional time increases the prejudice to 1st Technology in the event of a transfer by adding an additional layer of delay to the already lengthy Hague service process. Simple judicial expediency therefore suggests the case be kept in Las Vegas, in addition to the enumerated factors listed above. Tiltware's counsel has not indicated whether they will be representing Kolyma. Should Tiltware's counsel be willing to accept service for Kolyma, thereby removing the prejudice with respect to that specific defendant, 1st Technology (as stated above) will not oppose transfer of Kolyma with Tiltware, should the Court be inclined to grant the motion to transfer, though 1st Technology opposes the transfer.

III. CONCLUSION

For the foregoing reasons, 1st Technology respectfully requests that the Court deny Tiltware's motions to dismiss and, in the alternative, to transfer venue.

DATED this 19th day of June, 2006

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the 19th day of June, 2006, I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **PLAINTIFF 1ST TECHNOLOGY LLC's OPPOSITION TO DEFENDANT TILTWARE, LLC's MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, FOR TRANSFER OF VENUE** to the following counsel of record:

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AFFIDAVIT OF CECILIA P. VENTIMIGLIA IN SUPPORT OF 1ST TECHNOLOGY'S OPPOSITION TO TILTWARE, LLC's MOTION TO DISMISS

I, Cecilia P. Ventimiglia, declare the following:

1. I am an attorney licensed to practice law in the State of Nevada. I am counsel for 1st Technology, LLC in this case, and I have personal knowledge of the following facts, to which I can competently testify.

2. Attached hereto as Exhibit A is a true and accurate copy of Full Tilt Poker's homepage http://www.fulltiltpoker.com/.

3. Attached hereto as Exhibit B is a true and accurate copy of Tiltware's "About Us" web page http://www.tiltware.com/aboutus.php.

4. Attached hereto as Exhibit C is a true and accurate copy of the Full Tilt Poker press release web page http://www.fulltiltpoker.com/pressReleases.php?release=45.

5. Attached hereto as Exhibit D is a true and accurate copy of Full Tilt Poker's software download web page http://www.fulltiltpoker.com/download.php.

6. Attached hereto as Exhibit E is a true and accurate copy of Full Tilt Poker's online forum page http://pokerforums.fulltiltpoker.com/viewtopic.php?p=82061&highlight=#82061.

7. Attached hereto as Exhibit F is a true and accurate copy of *Tiltware, LLC And World Famous Poker Players Launch Full Tilt Poker - The Next Generation of Online Poker Software*, http://www.fulltiltpoker.com/pressReleases.php?release=1.

8. Attached hereto as Exhibit G is a true and accurate copy of *Jeff Simpson wonders why there's no crackdown on state's Internet poker players* by Jeff Simpson, LAS VEGAS SUN, Feb. 12, 2006.

9. Attached hereto as Exhibit H is a true and accurate copy of *Easy money, easier addiction?* by Howard Stutz, LAS VEGAS TRIBUNE, Oct. 14, 2005.

10. Attached hereto as Exhibit I is a true and accurate copy of *Full Tilt Poker's Pros Own the Felt at Bellagio and Foxwoods*, Press Release, Apr. 11, 2006.

11. Attached hereto as Exhibit J is a true and accurate copy of *Nevada players ante up online* by Liz Benston, LAS VEGAS SUN, Apr. 15, 2005.

12. Attached hereto as Exhibit K is a true and accurate copy of *Full Tilt Poker to Run $500,000 Las Vegas Tournament -- 100 of the Best Poker Players to Battle for the Top Money*, Press Release.

13. Attached hereto as Exhibit L is a true and accurate copy of *Poker Professional Kristy Gazes Wins $250,000 at the FullTiltPoker.Net Championship at Wynn Las Vegas*, July 14, 2005 eMediaWire Press Release.

14. Attached hereto as Exhibit M is a true and accurate copy of a June 22, 2005 Press Release and discussion from Full Tilt Poker's online discussion forums entitled *FullTiltPoker.net and Fox Sports Net announce a live poker broadcast to showcase the world's top poker players in a $500,000 tournament.*

15. Attached hereto as Exhibit N is a true and accurate copy of *We Do It All Vegas* newsletter article entitled *Both Sides of the Rail.*

16. Attached hereto as Exhibit O is a true and accurate copy of an article from the Cigar Aficionado's Poker Blog entitled *Pokermania*, July 7, 2005.

17. Attached hereto as Exhibit P is a true and accurate copy of an article from PokerNews entitled *The Poker Professor: Interview with Howard Lederer*, July 28, 2005.

18. Attached hereto as Exhibit Q is a true and accurate copy of an article from PokerNews entitled *The Business of Poker – Interview with Ray Bitar, CEO of Tiltware.*

Signed and sworn this 19th Day of June, 2006.

[signature]

Cecilia P. Ventimiglia

SUBSCRIBED and sworn to before me

This 19th day of June, 2006.

Notary Public

DANETTE YOUNG
Notary Public, State of Nevada
Appointment No. 06-102395-1
My Appt. Expires Jan. 9, 2010